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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 05M-16
04229

In the Matters of)	MB Docket No. 05-95
)	
KEGG COMMUNICATIONS, INC.)	NAL/Acct No. MB 20041810004
Licensee of Station K216EQ)	Facility ID No. 92810
Daingerfield, Texas)	
)	
and)	
)	
Application for Construction Permit for a New)	Facility ID No. 94199
Noncommercial Educational FM Station in)	File No. BPED-19990907MG
Daingerfield, Texas)	

MEMORANDUM OPINION AND ORDER

Issued: March 28, 2005 ; Released: March 30, 2005

1. Under consideration is a "Show Cause Reply," dated March 16, 2005, submitted, *pro se*, by KEGG Communications, Inc. ("KEGG"). This document was faxed to the Presiding Judge by KEGG on March 23, 2005. For the reasons which follow, the Show Cause Reply must be dismissed.

2. This proceeding was designated for hearing by *Order to Show Cause[,] Hearing Designation Order and Notice of Opportunity for Hearing*, FCC 05-66, released March 15, 2005 ("OSC"). Issues were specified to determine whether KEGG complied with certain FM Translator rules, whether KEGG made misrepresentations of fact or was lacking in candor, and whether KEGG is qualified to be and remain a Commission licensee. OSC, at para. 9. By *Order*, FCC 05M-13, released March 17, 2005, the Chief Administrative Law Judge appointed the undersigned to preside over this proceeding, and scheduled a prehearing conference for April 27, 2005. The *Order* also put all parties "on notice that they are expected to be fully cognizant of Part I of the Commission's Rules and Regulations concerning Practice and Procedure [47 C.F.R. Part I, Subpart A and Subpart B]." (Brackets in original.)

3. In its Show Cause Reply, KEGG requests that its license for the above captioned facility not be revoked, contends that it was in compliance with the Commission's translator rules, and "[a]gain" tries to answer the Commission's questions, "in detail." Reply, at 1. KEGG also maintains that it would be willing to work with the Commission to resolve this matter, argues that its station provides a much needed service to the Daingerfield, Texas, community, and avers that "[i]t would be a great tragic event if the license were revoked." *Id.* at 2. KEGG further asks:

In the event you find it necessary to revoke the license[, KEGG] would at this time request that [it] be allowed to volunteer [sic] transfer the license to a Spanish Broadcast group for continued service to the area[, a]nd the preceding case be dismissed with out [sic] any prejudice please.

Id. Finally, KEGG states that it "plans to attend the hearing" and requests that "the location be held at the FCC Field Office in Dallas." *Id.* at 4.

4. The Show Cause Reply must be dismissed inasmuch as it fails to comply with a number of Commission rules. First, it has not been properly filed. Documents such as KEGG's Reply must be submitted to the Commission in the manner specified in Section 0.401 of the Commission's Rules. Faxing the document to the Presiding Judge is *not* considered to be an official filing with the Commission. Section 1.7 of the Rules. Second, an original and six copies of the Reply were not filed as required by Section 1.51(a)(1) of the Rules. Third, the Reply was not addressed to the presiding officer by name as required by Sections 1.209, and 1.291(a)(4) of the Rules. Fourth, the Reply was not verified in the manner specified in Section 1.52 of the Rules. Fifth, the Reply was not served on counsel for the Enforcement Bureau, which was named a party to this proceeding in the OSC. Sections 1.47, 1.211, and 1.296 of the Rules; OSC at para. 14; Section 1.21(b) of the Rules.¹ These procedural infirmities require the dismissal of the Show Cause Reply.

5. Next, the OSC required KEGG to file a written appearance in accordance with Section 1.221(c) of the Rules. OSC at para. 12. Suffice it to say, KEGG's mere statement that it "plans to attend the hearing" does not comport with the requirements of that rule. Moreover, as outlined above, KEGG's submission does not constitute an official filing with the Commission.² In addition, KEGG's request to change the location of the hearing to the FCC's Dallas field office may not be entertained. Apart from the procedural deficiencies already discussed, this request was submitted to the wrong forum. Requests to change the venue of a hearing must be addressed to and acted on by the Chief Administrative Law Judge, not the presiding officer. Sections 0.351(d), 1.291(a)(2), and 1.209 of the Rules.³

6. Further, KEGG's Show Cause Reply apparently constitutes an impermissible *ex parte* presentation. Clearly, this is a restricted proceeding, the communication from KEGG, a party, was directed to the merits or outcome of the proceeding, and was submitted to decision-making personnel. Sections 1.1202(a), 1.1202(c), 1.1202(d)(3), and 1.1208 of the Rules. Inasmuch as KEGG's pleading was not served on counsel for the Enforcement Bureau, it appears to have been a prohibited *ex parte* presentation. Sections 1.1201(b)(1), and 1.1208 of the Rules. In accordance with Section 1.1212(c) of the Rules, this matter will be referred to the Office of General Counsel.

7. Finally, KEGG will again be put on notice that, if it chooses to represent itself in this proceeding, it must become thoroughly familiar with the Commission's rules and regulations concerning practice and procedure. In this regard, it is well established that:

[w]here a party elects to act without counsel, it must assume the burden of becoming acquainted with, and conforming to the requirements of, our rules. We cannot excuse the disruption of our administrative processes because a party, who undertakes to act as its own counsel, is unfamiliar with our rules and procedures; and no such disruption will be tolerated.

Silver Beehive Telephone Co., 34 FCC 2d 738, 739-40 (1972); *Classic Vision, Inc.*, 1 FCC Rcd 1109, 1110 n.2 (Rev. Bd. 1986), and cases cited therein.

¹ The Presiding Judge's office provided a copy of the Show Cause Reply to Bureau counsel on March 24, 2005.

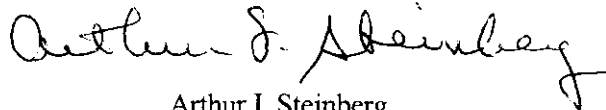
² Nevertheless, KEGG will be given another opportunity to file a written appearance which complies in all respects with the Commission's rules.

³ Assuming that a proper notice of appearance is filed, and counsel for the Enforcement Bureau consents, KEGG may participate in the April 27, 2005, prehearing conference by speakerphone. Section 1.364(a) of the Rules. *However, a formal motion requesting such relief must first be filed.*

Accordingly, IT IS ORDERED that the Show Cause Reply, dated March 16, 2005, submitted by KEGG Communications, Inc., IS DISMISSED.

IT IS FURTHER ORDERED that, on the Presiding Judge's own motion, the time within which KEGG may file a written appearance in accordance with Section 1.221(c) of the Commission's Rules, and OSC para. 12, IS EXTENDED to and including April 15, 2005.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Arthur I. Steinberg", with a stylized flourish at the end.

Arthur I. Steinberg
Administrative Law Judge